

Before the
Federal Communications Commission
 Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

In the Matter of)
)
 Cellular Service and Other Commercial) WT Docket No. 97-112
 Mobile Radio Services in the Gulf of Mexico)
)
 Amendment of Part 22 of the Commission's) CC Docket No. 90-6
 Rules to Provide for Filing and Processing of)
 Applications for Unserved Areas in the)
 Cellular Service and to Modify Other)
 Cellular Rules)

To: The Commission

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May 30, 2000

No. of Copies rec'd 0+11
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SUMMARY

Joint Commenters submit that ALLTEL's proposal for a "neutral" Coastal Zone would best serve the public interest objectives of this proceeding and address the Court of Appeals remand. In contrast, the record indicates that the proposals of Gulf-based carriers and the Commission's proposed rules should be rejected.

As demonstrated in ALLTEL's further comments, reliable, ubiquitous land-based cellular and 911 service in coastal areas is jeopardized under the current rules. Furthermore, ALLTEL's proposal accounts for propagation characteristics of the Gulf by establishing a "buffer zone" between Gulf- and land-based licensees, thus minimizing harmful interference issues. Furthermore, the proposed rules and the PetroCom/USCC proposal will create new harmful interference and licensing disputes, as well as customer dissatisfaction. The record demonstrates that Gulf-based carriers have the ability and incentive to create unserved areas on land by refusing to negotiate extensions into the Gulf even in areas where they have no SAB contour. The problems in the Gulf would not be addressed by the Commission's proposal to license the Coastal Zone via competitive bidding.

Coastel's arguments, which seek to support the current regulatory regime, are premised on a fundamentally misstated representation of the current state of cellular licensing and service in the Gulf. Indeed, Coastel's own actions underscore the fundamental flaws of the current regulatory regime. The record demonstrates that the rules and the Enforcement Bureau's recent decision involving the Mobile, Alabama MSA have enabled Coastel to create a new dispute by seeking land-based areas of the Gulf coast beyond its current GMSA. The record contradicts Coastel's arguments that the current rules facilitate cooperation between land- and Gulf-based carriers and service deployment. Land-based carriers do not have a means of providing ubiquitous, reliable service to their land-based customers.

The D.C. Circuit's remand does not require that the Commission retain the flawed status quo. Contrary to Coastel's assertions, the Commission is not foreclosed from taking a position contrary to PetroCom's arguments before the court. The Commission has ample authority to amend its rules as ALLTEL proposes to fulfill its public interest obligations. Gulf carriers' circumstances are addressed under ALLTEL's proposal, and the factual and public interest basis for ALLTEL's proposal is supported by the record in this proceeding.

Finally, neither Section 316 of the Act nor the Regulatory Flexibility Act ("RFA") preclude adoption of ALLTEL's proposal. ALLTEL proposes new rules generally applicable to a class of carriers, and implementation of those rules is well within the Commission's authority to adopt regulations in the public interest. This is the type of action appropriate for a rulemaking -- not adjudication. Nothing in the RFA supersedes the Commission's statutory public interest obligations, a fact well established in the statute itself and judicial precedent, and Coastel's alleged small business status does *not* mandate a different result here.

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ALLTEL Corporation ("ALLTEL"), BellSouth Corporation ("BellSouth"), SBC Wireless Inc. ("SBC Wireless"), and Telepak, Inc. d/b/a Cellular South ("Telepak") (collectively, "Joint Commenters"),¹ hereby jointly file reply comments in the above-referenced proceeding.² As discussed herein, Joint Commenters submit that ALLTEL's proposal for a "neutral" Coastal Zone would best serve the Commission's public interest objectives in this proceeding and address the Court of Appeals' remand by promoting reliable, ubiquitous cellular and 911 service for land-based customers and by providing additional flexibility to Gulf-based carriers. By

¹ Joint Commenters provide cellular service in MSAs and RSAs that, collectively, surround most of the Gulf of Mexico in the United States.

² *Cellular Service and Other Commercial Mobile Radio Services in the Gulf of Mexico*, WT Docket No. 97-112, *Amendment of Part 22 of the Commission's Rules to Provide for Filing and Processing of Applications for Unserved Areas in the Cellular Service and to Modify Other Cellular Rules*, CC Docket No. 90-6, *Second Further Notice of Proposed Rulemaking*, 12 FCC Rcd. 4516 (1997), *pleading cycle reopened*, DA 00-687 (rel. Mar. 27, 2000), 65 Fed. Reg. 24168 (April 25, 2000) ("Second FNPRM").

contrast, the record in this proceeding indicates further that the proposals of Gulf-based carriers and the Commission's proposed rules will not promote the objectives of the *Second FNPRM* and thus should be rejected.³

I. THE RECORD IN THIS PROCEEDING SUPPORTS ADOPTION OF ALLTEL'S PROPOSED "NEUTRAL ZONE" FOR THE GULF OF MEXICO

As discussed in ALLTEL's Further Comments in this proceeding, the Commission should amend its rules to permit both land-based and Gulf-based carriers to freely extend contours into the Coastal Zone as their cell sites and standards of good engineering practice require.⁴ BellSouth and GTE endorsed the ALLTEL proposal in their comments, and additional carriers, including SBC Wireless Inc., and Telepak now support ALLTEL's proposal as well. It is plain from the record that reliable, ubiquitous land-based service in coastal areas is jeopardized under the current regulatory regime.⁵ ALLTEL's proposal will effectively address this problem while providing Gulf carriers additional flexibility and addressing the D.C. Circuit's remand.⁶

A. ALLTEL's Proposal Accounts for Signal Propagation Characteristics in the Gulf of Mexico

By implementing, in effect, a "buffer zone" between the service areas in which co-channel Gulf- and land-based licensees each operate on sole primary status, ALLTEL's proposal

³ ALLTEL has asked an independent engineering consultant to provide additional record support for ALLTEL's proposal and to set forth in writing engineering concerns raised by the PetroCom/USCC proposal. This written material will be provided to the Commission as a separate *ex parte* presentation shortly.

⁴ ALLTEL Further Comments at 9-10.

⁵ See ALLTEL Further Comments at 4-6; GTE Supplemental Comments at 3-8; BellSouth Further Comments at 1; SBC Wireless Supplemental Comments at 1-2 (citing Comments filed June 2, 1997, in WT Docket No. 97-112).

⁶ See ALLTEL at 10-15; GTE at 11-14; BellSouth at 2-3.

minimizes harmful interference issues between land- and Gulf-based carriers' operations and would virtually eliminate the likelihood of controversial SAB overlaps. In this regard, Joint Commenters confirm that, under ALLTEL's proposal, existing rules requiring Gulf-based carriers to obtain the land-based licensees' consent to place land-based transmitters are retained,⁷ and *only* Gulf- and land-based licensees with service areas adjacent to the Coastal Zone would be eligible to serve areas in the Coastal Zone.⁸ Furthermore, frequency coordination would, as BellSouth states, be mandatory for land- and Gulf-based carriers in the Coastal Zone, and Gulf-based carriers would be permitted to initiate, discontinue, or reinstate service to particular platforms throughout the Exclusive Zone at any time.⁹

As the Commission and commenting parties have recognized throughout this proceeding, propagation characteristics over the Gulf raise unique service and technical issues not applicable to land-based licenses. As GTE demonstrates in its Supplemental Comments, permitting Gulf-based carriers to use the land-based formula at the coastline "would treat dissimilar carriers (water-based and land-based) similarly, in a way that disadvantages land-based carriers while simultaneously harming the public interest" by "captur[ing] subscriber traffic in the land-based carrier's CGSA"¹⁰ Indeed, this is one of the fatal flaws of the PetroCom/USCC proposal, which provides for use of the standard land-based formula for both Gulf- and land-based

⁷ See *Petroleum Communications, Inc. Order on Reconsideration*, 1 FCC Rcd. 511, 513 ¶ 19 (1986), *aff'd*, *Order on Reconsideration*, 2 FCC Rcd. 3695 (1987), and *Memorandum Opinion and Order*, 3 FCC Rcd. 399, 400 ¶ 11 (1988); BellSouth Comments at 3; GTE Comments at 18.

⁸ BellSouth Comments at 2.

⁹ *Id.* at 2-3.

¹⁰ See GTE at 16-17.

operations *at the coastline*.¹¹ By establishing a “neutral” Coastal Zone to serve as a buffer between land- and Gulf-based operations, the serious shortcomings of the PetroCom/USCC proposal and the proposed rules are addressed.¹²

B. The Record Demonstrates that the Commission’s Proposed Rules and the PetroCom/USCC Proposal Will Undermine the Objectives of This Proceeding by Creating New RF Interference and Licensing Disputes

Numerous commenters have demonstrated that the Commission’s proposed rules will not resolve and, indeed, will exacerbate RF interference and licensing disputes. In fact, land- and Gulf-based carriers alike oppose the Commission’s proposal, albeit for different reasons.¹³ By affording a separate water-based carrier sole primary status up to the coastline, *both* the current rules (which Coastel supports) and the proposed rules, are fundamentally flawed and will not promote the objectives of the *Second FNPRM*.¹⁴

Furthermore, as GTE explains, under the current and proposed rules, Gulf-based carriers have the ability and incentive to create unserved areas on land by refusing to negotiate extensions into the Gulf even in areas where they have no SAB contour.¹⁵ The ongoing dispute involving Coastel in the Mobile, Alabama MSA underscores in real terms the harm that such a scenario

¹¹ While PetroCom/USCC attempt to circumvent this problem by redefining the “coastline” as 10 miles seaward in the Eastern Gulf of Mexico, their proposal does nothing in this regard for the Western Gulf. *See* PetroCom/USCC Comments at 2.

¹² *See* GTE at 17-18 (“retaining the coastline as the market boundary” is acceptable only if the Commission “adopt[s] policies permitting land carriers to extend cell sites beyond the market boundary on some sort of reasonable basis”); *see also infra* Section I.B. As noted earlier, additional engineering analysis of the PetroCom/USCC proposal will be provided shortly.

¹³ *See* ALLTEL Comments at 6-9; GTE Comments at 3-10; Bachow/Coastel Comments at 4-8.

¹⁴ *See* GTE Comments at 5.

¹⁵ *See* GTE Comments at 8-9.

poses to land-based cellular customers.¹⁶ By giving *neither* the Gulf- *nor* the land-based carrier sole primary authorization in the Coastal Zone, and by allowing contour extensions, ALLTEL's proposal would allow the provision of more reliable and flexible service by Gulf and land-based carriers.

Commenting parties have also demonstrated that the public interest is not served by licensing the Coastal Zone area via competitive bidding. As GTE states, Gulf carriers' SAB extension efforts in the proposed Coastal Zone will likely not result in any significant unserved areas and, even more problematic for land-based customers, "it is highly unlikely that land-based providers will be able to improve their beachfront signal strength by applying to extend SAB contours into unserved Gulf waters."¹⁷ As Coastel notes, an auction "would produce little revenue because the unserved areas of the Coastal Zone would be minuscule."¹⁸

Furthermore, as GTE demonstrates in its comments, the PetroCom/USCC proposal is unworkable for a number of reasons. As GTE explains, use of the land-based 32 dBu-based formula at the coastline boundary between the GMSA and the land-based carrier's MSA/RSA for calculating SAB contours "fails to take into account the fact that radio signals propagate further over water."¹⁹ Joint Commenters agree further that this will result in harmful interference to land-based signals and result in new service and RF interference disputes. As ALLTEL and GTE

¹⁶ See ALLTEL Comments at 8; GTE Comments at 9-10.

¹⁷ See GTE Comments at 5; *see also* ALLTEL Comments at 16; SBC Wireless Comments at 4.

¹⁸ Bachow/Coastel Comments at 23.

¹⁹ See GTE Comments at 15.

noted in their comments, the resulting roaming charges to land-based customers will generate considerable customer dissatisfaction.²⁰

II. COASTEL'S OWN ACTIONS UNDERScore THE FUNDAMENTAL FLAWS OF THE CURRENT REGULATORY REGIME

Joint Commenters and Coastel do agree that the Commission should not adopt its proposal to license cellular service in the Coastal Zone via competitive bidding. As discussed below, little else of Coastel's comments is acceptable or warrants consideration as a constructive contribution to the Commission's efforts to resolve the service and interference disputes that have plagued the Gulf.

A. Coastel Fundamentally Misstates the Current State of Cellular Licensing and Service in the Gulf

Coastel asserts that the current regulatory scheme has "a proven record of success" in "providing reliable cellular service to the coastal areas of the Gulf of Mexico," and that the region "has experienced unprecedented growth in cellular service coverage."²¹ Further, the Enforcement Bureau's decision in *Bachow/Coastel v. GTE Wireless of the South*, according to

²⁰ See ALLTEL Comments at 5-6; GTE Comments at 4-5, 20. Contrary to Coastel's assertion, Sections 201, 202 and 332 of the Act do *not* sufficiently address this problem. See *Bachow/Coastel* Comments at 12, n.43. The Commission's concern in the *Second FNPRM* is whether the Gulf carriers' high roaming rates "should be a factor to consider in determining *the parameters of the Coastal and Exclusive Zones*" and is relevant only as to cellular customers who knowingly venture out of their home carrier's CGSA. See *Second FNPRM* ¶ 30 ("boats that wish to remain in constant contact with people on the shore (e.g., for safety or other reasons), *could plan their itineraries in such a way that they stay within the designated Coastal Zone*", emphasis added); *id.* ¶ 34 (discussing roaming issue). Gulf-based carriers' capture of calls originating from the land-based carrier's CGSA raises entirely different questions involving the integrity of the Commission's service area and technical RF interference rules, customer inconvenience and competitive parity between cellular and broadband PCS carriers.

²¹ *Bachow/Coastel* Comments at 8.

Coastel, has somehow resolved conflict between land- and Gulf-based cellular licensees.²²

Reality, however, belies Coastel's remarkable assertions.

First, it is *not* true that "reliable" service is provided in coastal areas, to date. Moreover, as ALLTEL and GTE have explained, the Enforcement Bureau's recent decision has enabled Coastel to act as the catalyst of a *new* dispute in the Mobile, Alabama MSA, which threatens land-based service rights.²³ Coastel describes its actions as "moving forward with further expansion of its network along coastal Alabama."²⁴ In fact, it is matter of Commission record that Coastel now seeks to serve *land-based areas* of the Gulf coast.²⁵ Coastel does not (and cannot seriously) contend that there is any sort of community of interest between the offshore oil platforms it serves and the residential areas of the Gulf coast that it is now seeking to serve.²⁶ More fundamentally, Coastel has *no* land-based service right in the mobile market.

Thus, while Coastel couches the current rules as "provid[ing] previously lacking guidance concerning what carriers can and cannot do in the GMSA," Coastel's own actions underscore how the current rules provide Gulf-based carriers incentive to expand *beyond* the GMSA. In short, the current rules have enabled Coastel to elevate the disputes beyond the issue of "which carriers should provide service to coastal areas" currently in the GMSA. Now, absent

²² Bachow/Coastel Comments at 9.

²³ ALLTEL Comments at 8; GTE Comments at 8-10.

²⁴ See Bachow/Coastel Comments at 9-10.

²⁵ See Bachow/Coastel, FCC Form 601, ULS File No. 0000113774 (submitted Apr. 21, 2000)

²⁶ See *Second FNPRM* ¶¶ 29-34. Rather, as GTE explains, "Bachow/Coastel's entire operating philosophy appears geared towards capturing as much land-based traffic and roaming fees as possible, rather than providing seamless Gulf-based cellular service to its customers." GTE at 5.

Commission action, disputes will increasingly involve Gulf-based carriers seeking to serve land-based customers outside their own CGSAs -- the very issue, as ALLTEL demonstrated in its comments, over which to date there has been *no* dispute throughout the history of Gulf cellular licensing.²⁷

Coastel also asserts that the current rules facilitate cooperation, not disputes, as well as reliable service in coastal areas. Again, the record in this proceeding contravenes this assertion.²⁸ The Enforcement Bureau's February 2000 decision simply has moved the ongoing disputes between Gulf and land-based carriers onto the shoreline where, as demonstrated by GTE's customer complaints, reliable service to land-based customers is now further jeopardized.²⁹

Coastel states that "land-based carriers are availing themselves of mechanisms under the current regulatory scheme such as" STAs and *de minimis* extensions.³⁰ Coastel does not reveal, however, that it has fought such land-based carriers' efforts "tooth-and-nail."³¹ (Indeed, the Commission expressly noted Coastel's resistance to land-based carriers' efforts in the *Second*

²⁷ See ALLTEL Comments at 2-4.

²⁸ See *Second FNPRM* ¶ 2; see also *infra* discussion of Coastel actions in Section II.A.

²⁹ See GTE Comments at 6. ALLTEL's approach will not only move these disputes away from the shoreline -- and, thus, away from land-based customers -- but minimize the instances of disputes in the first place.

³⁰ Bachow/Coastel Comments at 6.

³¹ See GTE Comments at 9-10; ALLTEL Corporation, Request for Special Temporary Authority, filed Sept. 7, 1999, at 6-8, and ALLTEL Corporation, Reply to Bachow/Coastel Informal Request for Clarification of the Record and Limitation, 2000C1-MAF, filed Nov. 15, 1999, at 1-2 (discussing history of Coastel opposition to *de minimis* extension requests from ALLTEL and its predecessors-in-interest).

FNPRM.)³² As numerous carriers have demonstrated in this proceeding, the traditional mechanisms carriers have used to provide service are available only at the will of the Gulf-based licensees, who have incentive to veto such efforts outright. Land-based carriers simply do not currently have a reliable regulatory avenue to meet the service needs of their shoreline customers, even when a minimal SAB extension into the Gulf does not even remotely reach that of the co-channel Gulf-based carrier.

B. The Court of Appeals Did Not Mandate that the Commission Maintain a Flawed Status Quo

According to Coastel, the Court of Appeals “concluded that the Commission had overlooked the critical point, that ‘*given* the inability of Gulf licensees to place transmitters on land, Gulf service areas should not be frozen at their current dimensions.’”³³ In the cited language, the court was simply restating -- not endorsing -- PetroCom’s argument, and expressly did “not foreclose the possibility that the Commission may develop a convincing rationale” for a position contrary to PetroCom’s.³⁴ In fact, the court said nothing about any purported “tenuous economic position faced by the Gulf-based carriers” and did not opine, in *dicta* or otherwise, that imposing different restrictions on Gulf-based carriers is somehow unfair.³⁵ The notion implicit in Coastel’s comments that the Commission is now somehow obligated to allow Gulf carriers to install land-based transmitters is absurd and underscores this Gulf carrier’s true improper motive.

³² *Second FNPRM* ¶ 36 n.69.

³³ *Petroleum Communications, Inc. v. FCC*, 22 F.3d 1164, 1173 (D.C. Cir. 1994).

³⁴ *Id.* at 1173.

³⁵ *See* Bachow/Coastel Comments at 21.

Gulf carriers' authority to serve the Coastal Zone is not sacrosanct and, like any other cellular carrier's service rights, is subject to the Commission's lawful exercise of its authority to regulate in the public interest. Contrary to Coastel's assertions, the Gulf-based carriers' ability to define their CGSAs by reference to the entire GMSA service area was *not* unique to Gulf-based carriers, as land-based carriers had similar ability in regards to their MSAs and RSAs.³⁶ Since that time, the rules governing land-based cellular carriers' CGSAs have been amended in numerous instances when the Commission determined that it was in the public interest to do so. The rules governing Gulf carriers' authorized service areas are no more immune from the Commission's public interest determinations than those of land-based carriers, and nothing in the court's decision mandates otherwise. As demonstrated by ALLTEL and other carriers, the current situation disserves the public interest, and the Commission has ample authority to amend its rules to meet its public interest obligations.

More fundamentally, the court did not question the Commission's rules limiting Gulf-based carriers' transmitters to offshore sites. Rather, it required the Commission to sufficiently account for Gulf carriers' circumstances in adopting any new rules. Importantly, nowhere did the court preclude the possibility that the rules governing Gulf-based carriers' CGSAs could be amended in a manner that accounts for Gulf carriers' unique circumstances *and* facilitates the deployment of reliable, ubiquitous land-based services.

As discussed in its Further Comments, ALLTEL's proposed approach fully addresses the court's remand by addressing Gulf carriers' unique circumstances. ALLTEL does not resuscitate the Commission's requirement that water- and land-based licensees throughout the entire Gulf

³⁶ See *Second FNPRM* ¶ 13; Coastel at 22. The Commission instead addressed Gulf carriers' unique circumstances by exempting them from the 39 dbu/75% buildout requirement. See *Second FNPRM* ¶ 13 (citing 6 FCC Rcd. at 6159, ¶ 11 (1991)).

adhere to a uniform actual service area rule.³⁷ Gulf carriers' service areas are not frozen "at the status quo" in either the Exclusive or the Coastal Zone.³⁸ Furthermore, Gulf-based carriers would not be subject to land-based carriers' SAB extensions into the Exclusive Zone.³⁹ Importantly, for purposes of the court's remand, the factual and public interest basis for ALLTEL's proposal is confirmed by the record in this proceeding.

C. Section 316 of the Communications Act Does Not Require a Hearing to Implement ALLTEL's Proposal

Coastel argues that the "proposed taking of licensed territory from two specific wireless licensees pursuant to a rulemaking is without precedent or justification."⁴⁰ As a threshold matter, ALLTEL's proposal would not take away licensed territory from the Gulf licensees, as they would continue to be authorized to serve the Coastal Zone. As ALLTEL discussed in its comments, however, the Commission clearly has authority to modify its service and technical rules in a manner that requires land- and Gulf-based licensees' to change their operations.⁴¹ Such steps are, in fact, amply supported in precedent.

The purpose of Section 316 of the Act "is to protect the individual licensee from a modification order of the Commission and is concerned with the conduct and other facts peculiar to an individual licensee."⁴² The Commission has already determined that, for land-based

³⁷ 22 F.3d at 1173.

³⁸ *Id.*

³⁹ See Bachow/Coastel Comments at 21.

⁴⁰ Bachow/Coastel Comments at 24.

⁴¹ ALLTEL Comments at 17-18.

⁴² *California Citizens Band Ass'n v. FCC*, 375 F.2d 43, 52 (9th Cir. 1967).

licensees, “technical changes in the definition of the CGSAs, adopted in a notice-and-comment rulemaking, are not . . . invalid because they will result in the modification of existing licenses and the shrinking of unserved areas.”⁴³ There is no basis for the conclusion that a rule change with the same impact is invalid solely because it affects a different class of licensees — in this case, Gulf carriers. ALLTEL’s proposal is the very type of policy decision appropriately made in a rulemaking, not involving adjudicative facts, and having only “classwide applicability.”⁴⁴

Coastel bemoans that the Commission’s proposed rules “are based entirely upon Bachow/Coastel’s status as a Gulf-based cellular licensee, and are directed specifically and exclusively at Bachow/Coastel and PetroCom.”⁴⁵ Elsewhere in its comments, however, Coastel admonishes the Commission that it has “fail[ed] to consider the plight of the Gulf carriers” and their unique circumstances. Coastel cannot have it both ways. It is clear from the record in this proceeding that simple engineering realities require that carriers in and along the Gulf be subject to different technical and service requirements than other licensees. Further, it is well within the Commission’s discretion to adopt rules to address technical issues applicable to a particular class of licensees.⁴⁶ ALLTEL’s proposal addresses all carriers’ circumstances, and addresses the rights

⁴³ *Committee for Effective Cellular Rules v. FCC*, 53 F.3d 1309, 1319 (D.C. Cir. 1995); *see also Amendment of Part 22 of the Commission’s Rules to Provide for Filing and Processing of Applications for Unserved Areas in the Cellular Service and to Modify Other Cellular Rules*, 12 FCC Rcd. 2109, 2127-28 ¶¶ 37-38 (1997). Contrary to Coastel’s assertions, a change in a community of license in broadcasting a licensee- and frequency-specific, adjudicatory action and is thus fundamentally different than that proposed by ALLTEL.

⁴⁴ *See Telocator Network v. FCC*, 691 F.2d 525, 551 (D.C. Cir. 1982).

⁴⁵ Bachow/Coastel Comments at 25-26.

⁴⁶ *Cellular Phone Taskforce v. FCC*, 205 F.3d 82, 89 (2d Cir. 2000) (citing *Federal Power Comm’n v. Florida Power & Light Co.*, 404 U.S. 453, 463 (1972), and upholding rules categorically excluding certain entities from certain environmental exclusion rules); *Keller*
(continued...)

of a narrow class of land-based licensees as well as the Gulf licensees through generally-applicable rules. Even to the extent that a license modification occurs, such a modification is clearly in the public interest and permitted, as required under the statutory language of Section 316.⁴⁷

D. Coastel's Claimed "Small Business" Status Does Not Preclude the Commission from Amending its Rules in the Public Interest

Coastel asserts, without substantiation, that it is a "small business" as defined by the SBA, and that the Commission's rules "improperly favor large, land-based carriers"⁴⁸ Without expressly saying so, Coastel thus implies that the Commission's authority to amend current rules is somehow restricted by the Regulatory Flexibility Act ("RFA"). Nothing in the RFA, however, is intended to trump an agency's obligation to comply with its own enabling statute.⁴⁹ The current regulatory regime in the wake of the court remand, as numerous

⁴⁶ (...continued)

Communications, Inc. v. FCC, 130 F.3d 1073, 10777 (D.C. Cir. 1997), *cert. denied*, 524 U.S. 954 (1998) (citing *MCI Cellular Tel. Co. v. FCC*, 738 F.2d 1322, 1333 (D.C. Cir. 1984) ("when the Commission addresses a 'highly technical question,' the court 'must show considerable deference to [its] expertise'")); *see also National Ass'n of Regulatory Util. Comm'rs v. FCC*, 737 F.2d 1095, 1140 (D.C. Cir. 1984), *cert. denied*, 469 U.S. 1227 (1985) (when "an agency is obliged to make policy judgments where no factual certainties exist or where facts alone do not provide the answer" courts require only that the agency "so state and go on to identify the considerations it found persuasive"); *WSTE-TV, Inc. v. FCC*, 566 F.2d 333, 338 (D.C. Cir. 1977) ("[e]specially when technical and engineering rules are considered in the context of waiver, the expertise of the agency should be allowed to function without interference from the courts, unless the decision is arbitrary").

⁴⁷ *See* 47 U.S.C. § 316(a)(1).

⁴⁸ Bachow/Coastel Comments at 2.

⁴⁹ *See Associated Fisheries of Maine, Inc. v. Daley*, 127 F.3d 104, 114 (1st Cir. 1997) (citing legislative history, 126 Cong. Rec. at S21459-60, S. Rep. No. 96-878, at 10, 14); *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 624 (5th Cir. 2000) ("consideration and reasoned rejection of significant alternatives which, in the Commission's judgment, would not have

(continued...)

commenters have demonstrated, disservices the public interest in public safety and in reliable, ubiquitous service to land-based customers. Given that land-based carriers are precluded from meeting the Commission's public interest objectives, while Coastel is able to game the current rules to its own advantage, Joint Commenters submit that the current rules are not the kind of "small business" accommodation Congress had in mind in enacting the RFA.⁵⁰

More fundamentally, Coastel has overstated the extent to which a Coastal Zone would adversely affect Gulf-based carriers. Coastel itself states that the Coastal Zone "does not contain the majority of cellular traffic in the Gulf."⁵¹ Moreover, Gulf-based carriers have no authority to serve land-based areas and, if Coastel's comments (as opposed to its unserved area applications) are to be believed, Gulf carriers' do not desire to serve (and would thus not object to being precluded from serving) land-based areas. Indeed, as noted earlier, most land-based carriers' requested *de minimis* SAB extensions do not overlap Gulf-based carriers' existing SAB contours. Further, Gulf-based cellular carriers do not compete with land-based carriers. Thus, there is no issue of the latter somehow obtaining a competitive advantage over the former. Rather, Gulf-based carriers' real competition is with other Gulf-based licensees. To the extent that Gulf-based carriers are looking for sources of revenues to supplement their service to oil platforms and large

⁴⁹ (...continued)

achieved with equivalent success its twin *statutory mandates* of universal service and local competition" satisfies RFA mandate (emphasis added)).

⁵⁰ See Regulatory Flexibility Act, Pub. L. 96-354, § 2(a)(7), 94 Stat. 1164 (1980) ("Congress finds and declares that . . . alternative regulatory approaches *which do not conflict with the stated objectives of applicable statutes* may be available which minimize the significant economic impact of rules on small businesses" (emphasis added)).

⁵¹ Bachow/Coastel Comments at 5.

watercraft offshore traffic, it should not be at the expense of disruption of reliable service to land-based customers and unintended (or otherwise) capture of this land-based traffic.

CONCLUSION

For the reasons discussed herein and in filings made by ALLTEL, BellSouth, GTE, SBC Wireless and others, the public interest requires that the Commission amend its rules to promote reliable, ubiquitous cellular and 911 service to land-based customers and to provide additional flexibility for Gulf-based licensees. ALLTEL's proposal represents an effective and technically feasible approach to meeting these objectives and it should be adopted by the Commission.

Respectfully submitted,

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By:

A handwritten signature in cursive script, appearing to read "Glenn S. Rabin".

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May 30, 2000